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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,062	02/27/2002	Stephen Spaulding Hickok	MAG 2 0003	9179
7:	590 03/10/2005		EXAMINER	
Jay F Moldovanyi			PRYOR, ALTON NATHANIEL	
Fay Sharpe Fagan Minnich & McKee 7th Floor			ART UNIT	PAPER NUMBER
1100 Superior Avenue			1616	· · · · · · · · · · · · · · · · · · ·
Cleveland, OH	44114-2518		DATE MAILED: 03/10/2005	5

Please find below and/or attached an Office communication concerning this application or proceeding.

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		Application No.	Applicant(s)	Z			
Office Action Survey		10/070,062	HICKOK, STEPHEN SPAUL	LDING			
	Office Action Summary	Examiner	Art Unit				
		Alton N. Pryor	1616				
Period fe	The MAILING DATE of this communication or Reply	appears on the cover sheet with	the correspondence address				
THE - Exte after - If the - If NC - Failt Any	IORTENED STATUTORY PERIOD FOR RE MAILING DATE OF THIS COMMUNICATIO insions of time may be available under the provisions of 37 CFF SIX (6) MONTHS from the mailing date of this communication. It is period for reply specified above is less than thirty (30) days, a poperiod for reply is specified above, the maximum statutory per tre to reply within the set or extended period for reply will, by start reply received by the Office later than three months after the med patent term adjustment. See 37 CFR 1.704(b).	N. R.1.136(a). In no event, however, may a replication of thirty (included in the statutory minimum of thirty (included in the statutory minimum of thirty (included in the statutory minimum of thirty (included in the statutory and statutory of the statutory of	ly be timely filed 30) days will be considered timely. IS from the mailing date of this communication NDONED (35 U.S.C. S. 133)	ı.			
Status							
1)	Responsive to communication(s) filed on 13	3 December 2004.					
2a)		his action is non-final.					
3)□	Since this application is in condition for allowance except for formal matters, prosecution as to the ments is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposit	ion of Claims			:			
5) 6) 7)	Claim(s) 1-8,11 and 13-34 is/are pending in 4a) Of the above claim(s) is/are without Claim(s) is/are allowed. Claim(s) 1-8,11 and 13-34 is/are rejected. Claim(s) is/are objected to. Claim(s) are subject to restriction and	drawn from consideration.					
Applicati	ion Papers						
9)[The specification is objected to by the Exam	iner.					
10)	10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.						
	Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
	Replacement drawing sheet(s) including the corr		-).			
11)	The oath or declaration is objected to by the	Examiner. Note the attached C	Office Action or form PTO-152.				
Priority ι	ınder 35 U.S.C. § 119			ĺ			
a)[Acknowledgment is made of a claim for foreign All b) Some * c) None of: 1. Certified copies of the priority docume 2. Certified copies of the priority docume 3. Copies of the certified copies of the priority docume application from the International Bure see the attached detailed Office action for a I	ents have been received. ents have been received in App riority documents have been re eau (PCT Rule 17.2(a)).	lication No ceived in this National Stage				
Attachment	Ne\			l'			
_	e of References Cited (PTO-892)	4) 🔀 Interview Sum	mary (PTO-413)				
2) 🔲 Notic	e of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/M	fail Date				
	nation Disclosure Statement(s) (PTO-1449 or PTO/SB/07 No(s)/Mail Date	(5) ☐ Notice of Information (6) ☐ Other:	mal Patent Application (PTO-152)				

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DETAILED ACTION

Claim Objection under 37 CFR 1.75(c)

Claim 22 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must should refer to other claims in the alternative only.

See MPEP § 608.01(n).

Claim Rejections - 35 USC § 112

I. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 26 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for treating pathogenic conditions, does not reasonably provide enablement for preventing pathogenic conditions. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make / use the invention commensurate in scope with these claims. The asserted utility is not believable on its face. It is not known how a method wherein a composition is claimed can be administered to prevent pathogenic conditions. The state of the art is what prior art knows about the invention. There is no known art wherein a certain composition is administered to successfully prevent pathogenic conditions. The level of ordinary skill in the art is high but only in the art of treating /

controlling pathogenic conditions. See DE 1211749; 9/29/62. The predictability or lack thereof in the art refers to the ability of one skilled in the art to extrapolate the disclosed or known results to the claimed invention. The lower the predictability, the higher the direction and guidance that must be provided by the applicant. In the instant invention the predictability is very low and consequently, the need for the higher levels of direction and guidance by the applicant. However, the amount of direction and guidance provided by the applicant is limited to treatment. There is no evidence in the specification that established correlation between the experiment and the claimed utility. The quantity of experimentation required to use the method as claimed in the instant invention, based on applicant's disclosure would be undue because, one of ordinary skill in the art would have performed significant amount of experiments.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8,11,13-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially comprising" in claims 1-8,11,13-34 (see specifically claim 1 line 2) is a relative term which renders the claim indefinite. The term "substantially comprising" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be

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reasonably apprised of the scope of the invention. What is meant by "substantially comprising"? Examiner suggests that the term be replaced by "consisting essentially of".

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in Ex parte Wu, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of Ex parte Steigewald, 131 USPQ 74 (Bd. App. 1961); Ex parte Hall, 83 USPQ 38 (Bd. App. 1948); and Ex parte Hasche, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 16,19 recite the broad recitation pH value is 2 or less (claim 16) or electrolytic potential is in excess of 300 millivolts (claim 19), and the claim also recites pH in the range of 1 to 2 (claim 16) or electrolytic potential preferably at least 340 (claim 19) which is the narrower statement of the range/limitation.

Claims 25,27,29-34 provide for the use of metal containing composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it

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merely recites a use without any active, positive steps delimiting how this use is actually practiced.

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Claims 25,27,29-34 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7,11,13-20,28 are rejected under 35 U.S.C. 102(b) as being anticipated by Anmelder (DE 3208609; 9/22/83). Anmelder teaches the mixing of NH4SO4 and FeCl3SO4 x 6H2O with H2SO4. See abstract, page 5 1st full paragraph, page 6 last paragraph. Note in a claim to a composition a statement to the composition's intended used (antimicrobial) has no patentable significance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anmelder as applied to claims 1-7,11,13-20,28 above. Anmelder teaches all that is recited by claims 21-24 except for the instantly arranged method steps for making the composition. In a process of making a composition, an arrangement of steps differing from the arrangement steps of the prior art has no patentable significance in the absence of unexpected results.

Restriction Requirement

The restriction requirement will not be maintained since application has 371 status.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alton Pryor

Primary Examiner

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